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6 Attorneys for Defendant and Counter-Claimant  
THIERRY GUETTA a/k/a MR. BRAINWASH

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

11 GLEN E. FRIEDMAN, ) Case No. CV10-0014 DDP (JCx)  
12 Plaintiff, )  
13 vs. )  
14 THIERRY GUETTA a/k/a MR. )  
BRAINWASH, and DOES 1 through )  
10, inclusive, )  
16 Defendants. )  
17 AND RELATED COUNTER-CLAIM. )  
18 \_\_\_\_\_ )  
DEFENDANT THIERRY GUETTA'S  
STATEMENT OF GENUINE ISSUES IN  
OPPOSITION TO PLAINTIFF GLEN E.  
FRIEDMAN'S MOTION FOR SUMMARY  
ADJUDICATION  
[FILED CONCURRENTLY WITH OPPOSITION  
TO MOTION TO SUMMARY ADJUDICATION;  
DECLARATIONS OF THIERRY GUETTA AND  
ALAN S. GUTMAN]  
**Date: May 9, 2011**  
**Time: 10:00 a.m.**  
**Ctrm: 3**

**HON. DEAN D. PREGERSON  
UNITED STATES DISTRICT JUDGE**

## **STATEMENT OF GENUINE ISSUES**

2 Defendant Thierry Guetta (“Guetta”) submits this statement of genuine issues  
3 pursuant to Central District of California Local Rule 56-2 in opposition to the motion for  
4 summary adjudication herein filed by Plaintiff Glen E. Friedman (“Friedman”). Facts 1  
5 through 10 below correspond to the facts and supporting evidence presented in the  
6 Statement of Uncontroverted Facts filed by Friedman. Where appropriate, the facts are  
7 followed by additional material facts showing a genuine issue. These are followed by  
8 Guetta’s additional material facts and supporting evidence showing a genuine issue.

No.	Friedman's Alleged Uncontroverted Fact and Evidence	Response
1.	<p>Glen E. Friedman created an original photograph of the music group RUN-DMC (the ("Subject Image").</p> <p>Dec Friedman ¶ 2.</p>	Undisputed.
2.	<p>Friedman was the sole author of the Subject Photograph, including selecting the subject matter, arrangement of the parties, angle of the photograph, lighting, composition, framing and determination of the precise time of talking the picture.</p> <p>Dec Friedman ¶ 2.</p>	<p>Disputed.</p> <p>Friedman "quite possibly" told the member on the left (DMC) to cup his fist and could only testify that he "most likely" put the group in their precise pose. The pose of the member on the right of the Photograph (Run) is commonly referred to as the "B-Boy Stance" in hip-hop culture and Friedman testified that he had seen Run posed in the "B-Boy Stance" previously. Deposition of Glen E.</p>

1		Friedman ("Friedman Depo.") (attached as Exhibit A to Declaration of Alan S. Gutman (see ¶ 2), 110:2-5, 111:2-5, 116:3-5.	
2	3.	The Subject Photograph was first published in 1994 in the book F*** YOU Heroes, authored by Glen Friedman (ISBN-10: 096491602.), which was the first public distribution of copies of the photograph. Dec Friedman ¶ 3.	
3	4.	Glen E. Friedman was the author of the book F*** YOU HEROES as an original work of authorship. Dec Friedman ¶ 3.	
4	5.	In March of 2003 Glen E. Friedman applied for registration of F*** YOU HEROES and my [sic] included photographs with the U.S. Copyright Office and was issued Copyright Registration Certificates TX 6-612-087 effective March 24, 2003. Dec Friedman ¶ 3.	
5	6.	Thierry Guetta copied Glen E. Friedman's Subject Photograph in creating the poster designated as "Run-DMC Canvas" or "Banner Work" Exhibit 7, Bates No. G-41. Exhibit 1, Deposition p. 88:17-19; Guetta Declaration, ¶ 16, Docket No. 41.	Disputed. Guetta did not "copy" the Subject Photograph and the cited evidence does not indicate that Guetta "copied" the Subject Photograph in creating the poster designated as "Run-DMC

		<p>“Canvas” or “Banner Work.” Rather, Guetta indicated that incorporated certain aspects of the Subject Photograph. Declaration of Thierry Guetta (“Guetta Decl.”), ¶¶ 8, 9, 12, 14 16.</p>
7.	<p>Thierry Guetta copied Glen E. Friedman’s Subject Photograph in creating the poster designated as “Fluorescent Graffiti stencil” or “Stencil Work”, Exhibit 13, Bates No. G-40. Guetta Declaration, ¶ 14, Docket No. 41.</p>	<p>Disputed. Guetta did not “copy” the Subject Photograph and the cited evidence does not indicate that Guetta “copied” the Subject Photograph in creating the poster designated as “Fluorescent Graffiti stencil” or “Stencil Work.” Rather, Guetta indicated that incorporated certain aspects of the Subject Photograph. Guetta Decl., ¶¶ 8, 9, 12, 14 16.</p>
8.	<p>Thierry Guetta copied Glen E. Friedman’s Subject Photograph in creating the poster designated as “Broken Records Work”. Exhibit 5, Bates No. G-39, Exhibit 12. Guetta Declaration, ¶ 12, Docket No. 41.</p>	<p>Disputed. Guetta did not “copy” the Subject Photograph and the cited evidence does not indicate that Guetta “copied” the Subject Photograph in creating the poster designated as “Broken Records Work.” Rather, Guetta indicated that incorporated certain aspects of the Subject Photograph. See</p>

1		Guetta Decl., ¶¶ 8, 9, 12, 14 16.
2	9. Thierry Guetta copied Glen E. Friedman's Subject Photograph in creating the poster designated as "Run DMC Old Family" or "Old Photo Work." Exhibit 4, Bates No. G-37, Exhibit 17.  Deposition p. 65:7-13; Guetta Declaration ¶ 9, Docket No. 41.	Disputed. Guetta did not "copy" the Subject Photograph and the cited evidence does not indicate that Guetta "copied" the Subject Photograph in creating the poster designated as "Run-DMC Old Family" or "Old Photo Work." Rather, Guetta indicated that incorporated certain aspects of the Subject Photograph. Guetta Decl., ¶¶ 8, 9, 12, 14 16.
10	10. Glen E. Friedman did not authorize Thierry Guetta to make, sell or display any reproduction or use of his Run DMC photograph.  Dec Friedman ¶ 5.	Undisputed.

#### GUETTA'S ADDITIONAL GENUINE ISSUES OF MATERIAL FACT

No.	Defendant's Additional Material Fact	Evidence
1.	Guetta is a world renowned artist that sometimes goes by "Mr. Brainwash."	Declaration of Thierry Guetta ("Guetta Decl."), ¶ 2.
2.	Guetta's first major art showing, which was called "Life is Beautiful," was a massive art installation at a former CBS studio in Hollywood, California.	Guetta Decl., ¶ 4.
3.	"Life is Beautiful" ran from June 18, 2008 until August 31, 2008.	Guetta Decl., ¶ 4.
4.	The show included about 200 works Guetta created, including paintings, sculptures, a 20 foot	Guetta Decl., ¶ 4, Exh. A.

1	tall robot constructed out of televisions and metal, and various other works of differing sizes and mediums.	
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4	5. Guetta was not paid to put on the show, rather, he paid to rent the space, for demolition, security and so on.	Guetta Decl., ¶ 5.
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7	6. At all times, admission to "Life is Beautiful" was free to the public and no concessions were sold.	Guetta Decl., ¶ 5.
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10	7. Other than selling his art, Guetta did not offer any goods or services in connection with the "Life is Beautiful" show and could not profit in any other manner therefrom.	Guetta Decl., ¶ 5.
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12		
13	8. In addition to the other approximately 200 pieces were a few works Guetta created in part by using the unprotectable aspects of the Photograph of Run-DMC taken by Friedman of the hip-hop group Run-DMC.	Guetta Decl., ¶ 6.
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18	9. The Photograph consists of the three members of Run-DMC staring at the camera and posing with bravado: one of the group's members is cupping his fist with his other hand and another member has his arms folded. Each member's face has a serious look that may described as "tough."	Exhibit B to Guetta Decl.
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23		
24	10. Each member of Run-DMC is wearing a black Stetson hat, a style of dress the group was and is well known for.	Exhs. B, K and L to Guetta Decl.; Friedman Depo., 100:22-101:8; 114:7-9; 161:3-10.
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26		
27	11. The background of the Photograph is a brick	Friedman Depo., 99:9-10.
28		

1	building in Hollis, Queens.	
2	12. What shall be referred to herein as the "Old Photo	Guetta Decl., ¶ 8, Exhs. C
3	Work" was created out of a 19th century	and D.
4	photograph of a family of four people	
5	13. Guetta purchased the 19th century photograph at	Guetta Decl., ¶ 9.
6	a flea market in Paris.	
7	14. After being scanned into a digital format, two of the	Guetta Decl., ¶ 9, Exhs. B,
8	family members were removed and replaced with	C and D.
9	the images of two of the members of Run-DMC	
10	from the digital image of the Photograph.	
11	15. Any of the digital alterations herein referenced	Guetta Decl., ¶ 9.
12	were performed by a graphic artist at Guetta's	
13	direction.	
14	16. The 19th century photograph made up the majority	Guetta Decl., ¶ 9, Exhs. C
15	of the Old Photo Work and other than the removal	and D.
16	of two of the family members, essentially no	
17	aspects from the older photograph were omitted.	
18	17. Guetta also caused one of the Stetson hats that	Guetta Decl., ¶ 9, Exhs. B,
19	the members of Run-DMC were wearing to be	C and D.
20	placed on one of the unknown persons in the Old	
21	Photo Work so as to make it appear that he was	
22	wearing the same style of hat.	
23	18. The images of the two Run-DMC members from	Guetta Decl., ¶ 9, Exhs. B
24	the Photograph were digitally altered so as to make	and D.
25	them more slender, smaller and to change their	
26	relative positions, thereby making their inclusion in	
27	the older photograph more spatially appropriate.	
28	19. Additionally, while the images of Run-DMC were	Guetta Decl., ¶ 9, Exhs. B,

1	crisp in the Photograph, the two members' features 2 were made more dull in the Old Photo Work so as 3 to create the sense that the Run-DMC members 4 were present with the family when the 19th century 5 photograph was taken.	C and D.
6	20. The entire image in the Old Photo Work, including 7 the two members of Run-DMC, had a sepia tone, 8 whereas the Photograph was a more standard 9 black and white.	Guetta Decl., ¶ 9, Exhs. B and D.
10	21. An image of an oval near the Old Photo Work's 11 perimeter gave the piece the appearance of an old 12 photograph that had been in a frame with an oval 13 window for some time and subsequently removed.	Guetta Decl., ¶ 9, Exhs. C and D.
14	22. None of the background from the Photograph was 15 used in the Old Photo Work.	Guetta Decl., ¶ 9, Exhs. B, C and D.
16	23. Guetta created prints of the Old Photo Work for 17 sale, some of which were sold during the two and 18 a half month run of the "Life is Beautiful" show and 19 some of which were sold on Guetta's website.	Guetta Decl., ¶ 10.
20	24. Guetta has not offered the Old Photo Work prints 21 for sale since well before the instant litigation 22 began.	Guetta Decl., ¶ 10.
23	25. Postcards incorporating the image were created, 24 but were not used for promotion of the show and 25 were instead given as a memento to people after they attended the show.	Guetta Decl., ¶ 11.
26	26. 46 other postcards bearing images of Guetta's 27 artwork that did not incorporate the Photograph	Guetta Decl., ¶ 11, Exh. E.

1	were also created and distributed in the same	
2	manner.	
3	27. The second category of work incorporating the	Guetta Decl., ¶ 12, Exh. F.
4	Photograph was a “one-off” (only one was created,	
5	no reproductions were made) depicting Run-DMC	
6	made from vinyl shards of broken records (the	
7	“Broken Records Work”).	
8	28. To create the Broken Records Work, Guetta	Guetta Decl., ¶ 12, Exhs. B
9	caused a digital image of the Photograph to be	and F.
10	altered so as to remove most of the detail from its	
11	subjects, leaving an outline of the group’s features.	
12	Any shadings and/or subtleties created by	
13	Friedman’s artistic decisions as a photographer	
14	(such as lighting, shutter-speed, etc.) were entirely	
15	eliminated.	
16	29. The background of the Photograph was discarded.	Guetta Decl., ¶ 12, Exhs. B
17		and F.
18	30. Guetta then had the image projected onto a large	Guetta Decl., ¶ 12, Exh. F.
19	piece of wood and painted the image onto the	
20	wood.	
21	31. Thereafter, Guetta glued more than 1,000 pieces	Guetta Decl., ¶ 12, Exh. F.
22	of broken phonograph records onto the painted	
23	wood.	
24	32. The result was a three-dimensional image of Run-	Guetta Decl., ¶ 12, Exh. F.
25	DMC created entirely from broken records.	
26	33. The use of broken vinyl gave the Broken Records	Guetta Decl., ¶ 12, Exh. F.
27	Work a fragmented appearance.	
28	34. The Broken Records Work further deviated from	Guetta Decl., ¶ 12, Exhs. B

1	the Photograph in that towards the bottom the	and F.
2	image of Run-DMC appeared to be dripping.	
3	35. The Broken Records Work was never offered for	Guetta Decl., ¶ 13.
4	sale. Other than the “Life is Beautiful” show, the	
5	Broken Records Work was never displayed or in	
6	any manner marketed by Guetta.	
7	36. The third category of works incorporating the	Guetta Decl., ¶ 14, Exhs. B
8	Photograph involved the use of a stencil (the	and G through I.
9	“Stencil Works”). As with the Broken Records	
10	Work, a digital image of the Photograph was	
11	altered so as to remove any shading and nuance.	
12	37. Additionally, the image was altered so that it could	Guetta Decl., ¶ 14, Exhs. B
13	be made into a one piece stencil, meaning Guetta	and G through I.
14	had to make decisions as to whether and how	
15	certain features could be incorporated. In order to	
16	create a single stencil, the artist must ensure that	
17	ever aspect of the image is connected by a	
18	“bridge.” Accordingly, for portion’s of the image	
19	that were not near other portions (e.g. a band	
20	member’s eye), Guetta had to determine how to	
21	bridge that feature to others so as to ensure a one-	
22	piece stencil could be created.	
23	38. Thereafter, the image was printed on high-quality,	Guetta Decl., ¶ 14, Exhs. G
24	rigid paper and Guetta cut the paper to create the	through I.
25	stencil.	
26	39. As with the other works, the background of the	Guetta Decl., ¶ 14, Exhs. G
27	Photograph was not incorporated in any manner.	through I.
28		

1	40.	Guetta placed the stencil on top of the three 2 canvases with different backgrounds and used 3 black spray paint to superimpose the image of Run- 4 DMC.	Guetta Decl., ¶ 14, Exhs. G through I.
5	41.	Only the Stencil Work found at Exhibit G, the piece 6 on the white background with graffiti, was ever 7 displayed by Guetta, the other two works were left 8 in storage and never displayed or marketed.	Guetta Decl., ¶ 15.
9	42.	The Stencil Works were never offered for sale in 10 any manner or otherwise used to promote Guetta 11 or his work.	Guetta Decl., ¶ 15.
12	43.	The fourth and final category of work incorporating 13 the Photograph was a painted banner of the 14 members of Run-DMC (the Banner Work), which 15 was also a one-off.	Guetta Decl., ¶ 16, Exh. J.
16	44.	Again, an image incorporating the members of 17 Run-DMC from the Photograph with the shading 18 and other nuances removed was projected onto a 19 canvas and then the image was hand-painted onto 20 the canvas.	Guetta Decl., ¶ 16, Exhs. B and J.
21	45.	The decisions Friedman made as a photographer, 22 such as lighting and type of film, were not 23 incorporated into the Banner Work, which used 24 only one color (black) of acrylic paint.	Guetta Decl., ¶ 16, Exhs. B and J.
25	46.	The image of Run-DMC is dripping in the same 26 manner as the Broken Records Work.	Guetta Decl., ¶ 16, Exhs. F and J.
27	47.	The Banner Work was sold prior to the "Life is 28 Beautiful" show, but was displayed at the "Life is	Guetta Decl., ¶ 17.

1	Beautiful" show and during a three-day music	
2	festival in Autumn 2008 in New York.	
3	48. As with the Old Photo Work, postcards	Guetta Decl., ¶ 17.
4	incorporating the image were created, but were not	
5	used for promotion of the show and were instead	
6	given as a keepsake to people after they attended	
7	the show.	
8	49. Friedman testified that he took the Photograph	Friedman Depo., 103:23-
9	around November 1985.	104:1.
10	50. Friedman stated that he chose the shoot's location.	Friedman Depo., 99:9-16.
11		
12	51. Friedman testified that he did not provide Run-	Friedman Depo., 100:22-
13	DMC with the hats worn in the Photograph and that	101:8.
14	Run-DMC had been previously photographed with	
15	such hats.	
16	52. While Friedman testified that he may have	Friedman Depo., 113:17-
17	participated in some of the wardrobe choices, he	22.
18	conceded that the cold weather played a role in	
19	what Run-DMC was wearing.	
20	53. Friedman further testified that the group had often	Friedman Depo., 113:24-
21	worn matching or similar outfits prior his taking the	114:9.
22	Photograph.	
23	54. Friedman stated that he did not develop the	Friedman Depo., 141:17-
24	Photograph.	19.
25	55. Friedman explained that since Run-DMC's music	Friedman Depo., 118:21-
26	inspired him, he wanted to express this inspiration	119:4.
27	to others and inspire them as much as possible by	
28	means of the Photograph.	

1	56.	Friedman testified that no one has told him that they would not license or purchase the Photograph because of Guetta's use.	Friedman Depo., 122:9-11.
2	57.	There are many photographs of Run-DMC from the 1980's that are similar to Friedman's Photograph, including the style of clothing, pose, demeanor and background.	Guetta Decl., ¶ 17, Exhs. K and L.
3	58.	Run-DMC's eponymous debut album, which was released the year before the Photograph was taken, depicts two of the members of the group in black Stetson hats giving "tough" looks to the camera in essentially the same vein as they do in the Photograph.	Guetta Decl., ¶ 17, Exh. K; Gutman Decl., ¶ 3, Exhs. B and C.
4	59.	Friedman does not own any of Run-DMC's rights of publicity.	Friedman Depo., 136:18- 137:5.
5	60.	Friedman was well aware that Guetta would argue fair use because Guetta specifically indicated as much in his motion to compel further responses to discovery.	Joint Stipulation in Support of Guetta's Motion to Compel Further Discovery Responses (attached as Exhibit A to Gutman Decl., see ¶ 4), 1:20-22 ("The information sought by the interrogatories and document requests is not only relevant to damages, it is relevant to determining whether Guetta's use of the photograph was fair
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		pursuant to 17 U.S.C. § 107(4).”).
61.	The pose of the member on the right of the Photograph (Run) is commonly referred to as the “B-Boy Stance” in hip-hop culture and Friedman testified that he had seen Run posed in the “B-Boy Stance” previously.	Friedman Depo., 110:2-5.
62.	Friedman “quite possibly” told the member on the left (DMC) to cup his fist and could only testify that he “most likely” put the group in their precise pose	Friedman Depo., 111:2-5, 116:3-5.

12 Dated: April 18, 2011

13 LAW OFFICES OF ALAN S. GUTMAN

14 /s/ Alan S. Gutman

15 By: \_\_\_\_\_

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